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Collector of Central Excise Vs. Pawan Tyres (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-21-1996

Reported in : (1997)(93)ELT635TriDel

Appellant : Collector of Central Excise

Respondent : Pawan Tyres (P) Ltd.

Judgement :

1. Respondent was engaged in the manufacture of tyres and air bags falling under erstwhile TI-68. The dispute in the appeal relates to duty payable on air bags in respect of clearances for the home consumption made during the period 31-12-1984 to 28-12-1985. Though the air bags were intended for use for captive consumption, actually they were cleared for home consumption without payment of duty. Show cause notice dated 30-4-1986 was issued demanding duty of Rs. 30,389.25 on assessable value of Rs. 2,02,595.27. Notice also proposed imposition of penalty. Respondent claimed benefit of exemption which was rejected by the Additional Collector. Respondent contended that the amount of Rs. 30,389.25 must be treated the part of the cum-duty price and assessable value should be worked out at the cum-duty basis. Additional Collector accepted this contention and held respondent liable to pay duty of Rs. 21,610.66.

2. Department has no case that besides price collected, any amount has been collected as excise duty. Therefore, whatever amount was collected must be treated as amount collected on the basis of cum-duty price.

That being so, the amount of Rs. 30,389.25 which was the duty calculated on the wholesale price amount should be treated as part of the wholesale price and assessable value and duty calculated accordingly. This is supported by the observations of the Supreme Court in Assistant Collector of Central Excise v. Bata India Limited - 1996 (14) RLT 613 (S.C.). It was observed therein that unless it is shown by the manufacturer that the price of the goods includes an amount of excise duty payable by him no question of exclusion of the duty element from the price for determination of value under Section 4(4)(d)(2) will arise. In other words, if duty is payable by the manufacturer that will be eligible for deduction from the price. As has come out in the facts of this case, the price realised by the respondent was cum-duty price, and as duty was leviable on the goods and had, in fact, paid pursuant to the impugned order passed by the Additional Collector of Central Excise, the deduction of the duty element claimed for arriving at the assessable value was justified. It will make no difference whether the duty amount has been paid by the assessee at the time of clearance of the goods or it was paid subsequently. What is material is that the excise duty was payable on the goods. The impugned order in this behalf is, therefore, correct. We are told that there is an appeal against the imposition of penalty filed by the respondent which is pending in another Bench.

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